

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

**FILED**

**MAR 25 2002**

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

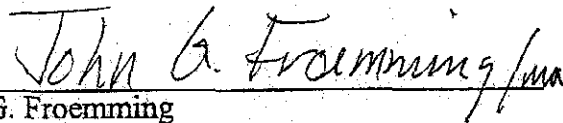
**STIPULATION AND PROPOSED ORDER SEALING  
CERTAIN HIGHLY CONFIDENTIAL MATERIALS AND INFORMATION  
RELATING TO NON-PARTY GATEWAY, INC.**

Pursuant to LCvR5.1(j) and ¶ J.2 of the Stipulation and Protective Order dated May 27, 1998, non-party Gateway, Inc. and the parties hereto agree that certain materials and information relating to the testimony of Gateway employee Mr. Anthony Fama should be kept under seal. A listing of this material and information is attached hereto as Tab A. This material includes exhibits to the direct testimony of Anthony Fama; ¶128 and portions of ¶106 and ¶132 of Fama's direct testimony; and certain documents and information contained therein that Microsoft has stated it may use during cross examination of Mr. Fama.

Gateway and the parties agree that the accompanying redacted version of Mr. Fama's direct testimony, and the accompanying redacted copy of PX543A, labeled as PX543B, may be used in open court.

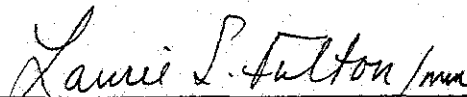
Respectfully submitted,

Dated: March 25, 2002



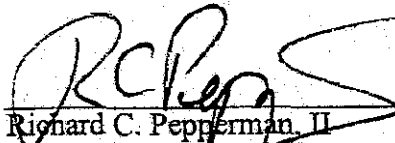
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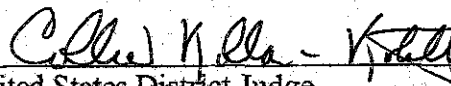


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For good cause shown, non-party Gateway, Inc.'s Stipulated Motion to Seal is hereby  
GRANTED.

SO ORDERED this 24 day of March, 2002.



United States District Judge

**TAB A**

**Materials Related to the Direct Testimony of Anthony Fama**

PX1207  
PX1513  
PX1164  
PX543A  
PX54  
PX1243  
PX1188  
PX56  
PX1190

The license-related figures from ¶106 and ¶132, and ¶128 of Anthony Fama's direct testimony, in its entirety

**Materials and Information That Microsoft Intends to Use During the Cross-Examination of Anthony Fama**

026652-026661  
026761-026763  
026753-026754  
026766-026771  
027427-027433  
025817-025832

MS01 0049242-0049244

**Redirect**

026779-026788 (2001 MDP)

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**STIPULATED MOTION TO SEAL CERTAIN HIGHLY CONFIDENTIAL  
MATERIALS OF NON-PARTY GATEWAY, INC.**

Pursuant to LCvR5.1(j) and ¶ J.2 of the Stipulation and Protective Order dated May 27, 1998, non-party Gateway, Inc. and the parties hereby submit this joint stipulated motion to seal certain materials and information therein relating to the testimony of Gateway employee Mr. Anthony Fama.

Gateway moves to seal the following exhibits and information relating to the direct testimony of Anthony Fama: PX1207: BTD effective November 1, 2000 through October 31, 2003; PX1513: DTOS effective February 1, 2001 through January 31, 2002; PX1243: letters between Microsoft and Gateway which reference specific provisions in the 1996 license agreement between Microsoft and Gateway; PX1188: BTD effective November 1, 1997; and PX1190: letter from Mark Gunter of Microsoft to Gui Kahl of Gateway regarding Gateway's MDP discount for Windows Desktop Family Products, effective January 1, 2002. Furthermore, Gateway moves to seal the following confidential documents, which the plaintiff has stated it may use on redirect of Mr. Fama: 026779-026788.

Gateway also moves to seal ¶128 in its entirety and a portion of ¶132 of Mr. Fama's direct testimony, which reference certain license-related figures from the aforementioned agreements. Gateway and the parties agree that the accompanying redacted version of Mr. Fama's direct testimony may be used in open court.

Gateway also moves that the following Gateway Highly Confidential documents or information therein, if used by Microsoft during the cross-examination of Mr. Fama, be kept under seal: 026652-026661, 026761-026763, 026753-026754, 026766-026771, 027427-027433, and MS01 0049242-0049244.

The reason for this motion is that these materials contain terms of Highly Confidential, competitively sensitive agreements between Microsoft and Gateway, trade secrets, and/or other proprietary information as to the contractual relations between Gateway and Microsoft that are deemed important by Gateway, the disclosure of which to Microsoft employees or third party competitors of Gateway risks severe and unfair competitive injury to Gateway. Accordingly, alternatives to sealing would not provide sufficient protection against the risk of disclosure of Highly Confidential information to Gateway.

We are further informed that such third-party materials relating to OEM pricing were kept under seal in the merits phase of this case.

A Stipulation And Proposed Order accompanies this motion.

Respectfully submitted,



Dated: March 25, 2002

John G. Froemming

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